

ORIGINAL

OPEN MEETING

MEMORANDUM



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TO: THE COMMISSION

2015 APR 22 A 11:15

FROM: Utilities Division

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: April 22, 2015

RE: IN THE MATTER OF THE JOINT APPLICATION OF MCLEODUSA TELECOMMUNICATIONS, SERVICES, LLC., PAETEC COMMUNICATIONS, INC., WINDSTREAM COMMUNICATIONS, INC., AND TALK AMERICA, INC. FOR APPROVAL OF WAIVER OF THE SLAMMING RULES, AAC R-14-2-1901, AND TRANSFER OF CUSTOMERS TO TALK AMERICA SERVICES, LLC. (DOCKET NOS. T-03267A-15-0058, T-03663A-15-0058, T-20436A-15-0058, T-20918A-15-0058 AND T-03342A-15-0058)

On February 26, 2015, McLeodUSA Telecommunications Services, LLC ("McLeodUSA"), PaeTec Communications, Inc. ("PaeTec"), Windstream Communications, Inc. ("Windstream") and Talk America, Inc. ("Talk America"), together the "Windstream Entities", and Talk America Services, LLC ("TAS"), all parties collectively the "Applicants", filed a joint application requesting approval from the Arizona Corporation Commission ("Commission") for a waiver of Arizona Administrative Code ("A.A.C") R14-2-1901, the "Slamming Rules", in connection with the transfer of the Windstream Entities' residential local exchange customers in Arizona to TAS.

In support of this filing, Applicants provide the following information.

DESCRIPTION OF THE APPLICANTS

A. McLeodUSA Telecommunications Services, LLC

McLeodUSA's Certificate of Convenience and Necessity ("CC&N") to provide competitive resold interLATA/intraLATA telecommunications services in Arizona was granted by the Commission in Decision No. 61001 dated July 16, 1998. McLeodUSA was also granted a CC&N to provide competitive resold and facilities-based local exchange and exchange access telecommunications services in Arizona pursuant to Decision No. 62627 dated June 9, 2000.

B. PaeTec Communications, Inc.

The Commission approved PaeTec's application for a CC&N to provide competitive interLATA/IntraLATA resold telecommunications service (except local exchange services) in Decision No. 62458 dated April 14, 2000.

Arizona Corporation Commission

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C. *Talk America, Inc.*

Talk America's application for a CC&N to provide competitive resold interexchange telecommunications service (except local exchange services) was approved by the Commission in Decision No. 64084 dated October 4, 2001.

D. *Windstream Communications, Inc.*

Windstream's CC&N to provide competitive resold long distance telecommunications service in Arizona was approved by the Commission in Decision No. 68965 dated September 21, 2006.

E. *Talk America Services, LLC*

TAS is a Delaware limited liability company and an indirect subsidiary of Communication Sales & Leasing, Inc. (which is in turn an indirect subsidiary of Windstream Holdings, Inc.). TAS has a CC&N to provide competitive resold local exchange and interexchange telecommunications service in Arizona pursuant to Decision No. 74943 dated February 9, 2015.

THE PROPOSED TRANSACTION

The Applicants state Windstream Holdings, Inc. will be completing a transaction in which its business will be divided into two (2) independent units. The first, an operating unit, will continue to provide telecommunications and related services, and the second, a real estate investment trust ("REIT"), will hold title to certain distribution plant assets ("Subject Assets") that will be leased back exclusively to Windstream Holdings, Inc. for the benefit of the Windstream Entities on a long term basis. In connection with this transaction, the residential local exchange and long distance customers of the Windstream Entities will be transferred to TAS.

The Windstream Entities will retain all of their business customers along with their existing certifications in order to continue to provide telecommunications services to business customers. Once the transfer is complete, TAS will assume all managerial, technical and financial responsibilities in connection with providing service to the former Windstream Entities residential customers.

TAS states it will incorporate into its tariff the rates, terms and conditions of services currently provided to the Windstream Entities' residential customers. The customers transferred to TAS will continue to receive the same services from TAS they currently receive under the rates, terms and conditions of the Windstream Entities. The transfer is designed to be seamless as there will be no change in the customer's rates, terms and conditions and there will be no charge to the transferred customers.

STAFF'S ANALYSIS

Request for Waiver of Slamming Rules

TAS seeks a waiver of Article 19 - Consumer Protections For Unauthorized Carrier Changes (A.A.C. R14-2-1901 to -1913), the Slamming Rules, for the transfer of fewer than one hundred residential local exchange and long distance customers in Arizona. Pursuant to 47 C.F.R. § 64.1120(e)(3) of the Federal Communications Commission's ("FCC") rules, beginning on or about February 24, 2015 a written notice of the transfer was provided to the Windstream Entities' customers via First Class United States mail. A copy of this notification was provided as Exhibit A to the Application.

Staff has reviewed the notice that was sent to those affected customers. Because the notice informs customers that the rates, terms and conditions of service will not change as a result of the proposed transactions and informs customers that they may subscribe to the telecommunications service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in this matter.

Complaints and Compliance

The Compliance Section of the Utilities Division reports the Applicants are in compliance. The Consumer Services Section of the Utilities Division reports that from January 1, 2012 to March 5, 2014 there have been no complaints or opinions concerning Talk America, TAS and PaeTec. During this same time period, there has been one (1) cramming complaint about McLeodUSA and one (1) new service and one (1) repair complaint concerning Windstream. All aforementioned complaints have been resolved and closed.

According to the Corporations Division, all Applicants are in good standing. All the Companies except TAS filed their respective Utilities Annual Reports. TAS's first Utilities Annual Report is not due until 2016.

STAFF RECOMMENDATIONS

Staff recommends approval of the TAS Application to acquire the Arizona customers of the Windstream Entities.

Staff further recommends that approval be conditioned on the following:


- a. The Applicants provide notice to Docket Control within thirty (30) days following completion of the proposed transactions in this Application.
- b. That TAS file an updated tariff, within thirty (30) days of the effective date of a Decision in this matter, to incorporate the rates, terms and conditions of service that were included in the tariffs of the Windstream Entities.

THE COMMISSION

April 22, 2015

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Staff believes the Commission's Slamming Rules apply to this transaction. However, based on the above, Staff recommends a waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases because the notice informs customers that the rates, terms and conditions of service will not change as a result of this proposed transfer and informs customers that they may subscribe to the telecommunications service provider of their choice.



Steven M. Olea
Director
Utilities Division

SMO:MAC:red\RWG

ORIGINATOR: Matt Connolly

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 SUSAN BITTER SMITH
 Chairman

3 BOB STUMP
 Commissioner

4 BOB BURNS
 Commissioner

5 DOUG LITTLE
 Commissioner

6 TOM FORESE
 Commissioner

7

8 IN THE MATTER OF THE JOINT	}	DOCKET NO. T-03267A-15-0058
9 APPLICATION OF MCLEODUSA		T-03663A-15-0058
10 TELECOMMUNICATIONS SERVICES,		T-20436A-15-0058
11 LLC, PAETEC COMMUNICATIONS, INC.,		T-20918A-15-0058
12 WINDSTREAM COMMUNICATIONS, INC.		T-03342A-15-0058
13 AND TALK AMERICA, INC. FOR		
14 APPROVAL OF WAIVER OF THE		DECISION NO. _____
15 SLAMMING RULES AAC R-14-2-1901, AND		
16 TRANSFER OF CUSTOMERS TO TALK		<u>ORDER</u>
17 AMERICA SERVICES, LLC		

14
15 Open Meeting
16 May 12 and 13, 2015
17 Phoenix, Arizona

18 BY THE COMMISSION:

19 FINDINGS OF FACT

20 1. On February 26, 2015, McLeodUSA Telecommunications Services, LLC
21 ("McLeodUSA"), PaeTec Communications, Inc. ("PaeTec"), Windstream Communications, Inc.
22 ("Windstream") and Talk America, Inc. ("Talk America"), together the "Windstream Entities", and
23 Talk America Services, LLC ("TAS"), all parties collectively the "Applicants", filed a joint application
24 requesting approval from the Arizona Corporation Commission ("Commission") for a waiver of
25 Arizona Administrative Code ("A.A.C") R14-2-1901, the "Slamming Rules", in connection with the
26 transfer of the Windstream Entities' residential local exchange customers in Arizona to TAS.

27 2. In support of this filing, Applicants provide the following information.

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Description of the Applicants*McLeodUSA Telecommunications Services, LLC*

3. McLeodUSA's Certificate of Convenience and Necessity ("CC&N") to provide competitive resold interLATA/intraLATA telecommunications services in Arizona was granted by the Commission in Decision No. 61001 dated July 16, 1998. McLeodUSA was also granted a CC&N to provide competitive resold and facilities-based local exchange and exchange access telecommunications services in Arizona pursuant to Decision No. 62627 dated June 9, 2000.

PaeTec Communications, Inc.

4. The Commission approved PaeTec's application for a CC&N to provide competitive interLATA/IntraLATA resold telecommunications service (except local exchange services) in Decision No. 62458 dated April 14, 2000.

Talk America, Inc.

5. Talk America's application for a CC&N to provide competitive resold interexchange telecommunications service (except local exchange services) was approved by the Commission in Decision No. 64084 dated October 4, 2001.

Windstream Communications, Inc.

6. Windstream's CC&N to provide competitive resold long distance telecommunications service in Arizona was approved by the Commission in Decision No. 68965 dated September 21, 2006.

Talk America Services, LLC

7. TAS is a Delaware limited liability company and an indirect subsidiary of Communication Sales & Leasing, Inc. (which is in turn an indirect subsidiary of Windstream Holdings, Inc.). TAS has a CC&N to provide competitive resold local exchange and interexchange telecommunications service in Arizona pursuant to Decision No. 74943 dated February 9, 2015.

Description of the Transaction

8. The Applicants state Windstream Holdings, Inc. will be completing a transaction in which its business will be divided into two (2) independent units. The first, an operating unit, will continue to provide telecommunications and related services, and the second, a real estate investment

1 trust ("REIT"), will hold title to certain distribution plant assets (the "Subject Assets") that will be
2 leased back exclusively to Windstream Holdings, Inc. for the benefit of the Windstream Entities on a
3 long term basis. In connection with this transaction, the residential local exchange and long distance
4 customers of the Windstream Entities will be transferred to TAS.

5 9. The Windstream Entities will retain all of their business customers along with their
6 existing certifications in order to continue to provide telecommunications services to business
7 customers. Once the transfer is complete, TAS will assume all managerial, technical and financial
8 responsibilities in connection with providing service to the former Windstream Entities residential
9 customers.

10 10. TAS states it will incorporate into its tariff the rates, terms and conditions of services
11 currently provided to the Windstream Entities' residential customers. The customers transferred to
12 TAS will continue to receive the same services from TAS they currently receive under the rates, terms
13 and conditions of service of the Windstream Entities. The transfer is designed to be seamless as there
14 will be no change to the customer's rates, terms and conditions of service and there will be no charge
15 to the transferred customers.

16 **Request for Waiver of Slamming Rules**

17 11. TAS seeks a waiver of Article 19 - Consumer Protections For Unauthorized Carrier
18 Changes (A.A.C. R14-2-1901 to -1913), the Slamming Rules, for the transfer of fewer than one
19 hundred residential local exchange and long distance customers in Arizona. Pursuant to 47 C.F.R. §
20 64.1120(e)(3) of the Federal Communications Commission's ("FCC") rules, beginning on or about
21 February 24, 2015 a written notice of the transfer was provided to the Windstream Entities' customers
22 via First Class United States mail. A copy of this notification was provided as Exhibit A to the
23 Application.

24 12. Staff has reviewed the notice that was sent to those affected customers. Because the
25 notice informs customers that the rates, terms and conditions of service will not change as a result of
26 the proposed transactions and informs customers that they may subscribe to the telecommunications
27 service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in
28 this matter.

Complaints and Compliance

13. The Compliance Section of the Utilities Division reports the Applicants are in compliance. The Consumer Services Section of the Utilities Division reports that from January 1, 2012 to March 5, 2014 there have been no complaints or opinions concerning Talk America, TAS and PaeTec. During this same time period, there has been one (1) cramming complaint about McLeodUSA and one (1) new service and one (1) repair complaint concerning Windstream. All aforementioned complaints have been resolved and closed.

14. According to the Corporations Division, all Applicants are in good standing. All the Companies except TAS filed their respective Utilities Annual Reports. TAS's first Utilities Annual Report is not due until 2016.

Staff Recommendations

15. Staff recommends approval of the TAS Application to acquire the Arizona customers of the Windstream Entities.

16. Staff further recommends that approval be conditioned on the following:

- The Applicants provide notice to Docket Control within thirty (30) days following completion of the proposed transactions in this Application;
- That TAS file an updated tariff, within thirty (30) days of the effective date of a Decision in this matter, to incorporate the residential rates, terms and conditions of service that were included in the tariffs of the Windstream Entities.

17. Staff believes the Commission's Slamming Rules apply to this transaction. However, based on the above, Staff recommends a waiver of A.A.C. R14-2-1904, et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases because the notice informs customers that the rates, terms and conditions of service will not change as a result of this proposed transfer and informs customers that they may subscribe to the telecommunications service provider of their choice.

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CONCLUSIONS OF LAW

1. The Commission has jurisdiction over McLeodUSA Telecommunications Services, LLC, PaeTec Communications, Inc., Windstream Communications, Inc., Talk America, Inc. and Talk America Services, LLC and the subject matter in this filing.

2. The Commission, having reviewed the filing and Staff's Memorandum dated April 22, 2015, concludes that it is in the public interest to grant approval as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the Application of Talk America Services, LLC to acquire the residential customers of McLeodUSA Telecommunications Services, LLC, PaeTec Communications, Inc., Windstream Communications, Inc., Talk America, Inc. be and hereby is approved as discussed herein.

IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases be and hereby is approved.

IT IS FURTHER ORDERED that within thirty (30) days following the closing of the proposed transaction, Talk America Services, LLC inform the Commission by filing an affidavit with Docket Control that transaction-related activities are completed.

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1 IT IS FURTHER ORDERED that Talk America Services, LLC file an updated tariff, within
2 thirty (30) days of the effective date of a Decision in this matter, to incorporate the residential rates,
3 terms and conditions of service that were included in the tariffs of McLeodUSA Telecommunications
4 Services, LLC, PaeTec Communications, Inc., Windstream Communications, Inc. and Talk America,
5 Inc.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7
8 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

9
10 _____
CHAIRMAN

COMMISSIONER

11
12
13 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER

14
15 IN WITNESS WHEREOF, I, JODI JERICH, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2015.

18
19 _____
20 JODI JERICH
21 EXECUTIVE DIRECTOR

22 DISSENT: _____

23
24 DISSENT: _____

25 SMO:MAC:red/RWG
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27
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SERVICE LIST FOR: MCLEODUSA TELECOMMUNICATIONS SERVICES, LLC, PAETEC COMMUNICATIONS, INC., WINDSTREAM COMMUNICATIONS, INC. AND TALK AMERICA, INC.

DOCKET NOS. T-03267A-15-0058, T-03663A-15-0058, T-20436A-15-0058, T-20918A-15-0058 and T-03342A-15-0058

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